Supreme Court, U.S.
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No. 91-2034

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

J.M., individually

Petitioner,

-against-

V.C.,

Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY ADDRESSING *PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA V. CASEY*

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ARGUMENT

Introduction

J.M., in his individual capacity, submits this brief to show how *Planned Parenthood of S.E. Pa. v. Casey*, __ U.S. __ 1992 WL 142546 (U.S.) ("*Casey*") enhances the merits of his petition.[1]

J.M.'s own individual rights are dependent, in some measure, upon whether his unborn child is, in fact, a human being. By not reexamining the question of when the life of a human being begins, *Casey* failed to reexamine one of *Roe's* most essential elements. After all, the child is the very focus and subject of the national debate to which the *Casey* Court referred. Slip Op. at 19. The whole of abortion jurisprudence has been created and developed devoid of any analysis or resolution of the most critical question upon which the entire law depends.[2] It is not so much that *Casey* failed to reexamine a question wrongly decided in *Roe*, as much as *Roe* failed to answer it at all. In 1973 when *Roe* stated that the "point in the development of man's knowledge" was inadequate to determine when life begins, there was an implied promise to review the question when man's knowledge has reached the point

[1] This brief is substantively different from that filed by J.M., as guardian.

[2] See, related observation of Justice Scalia, dissenting, Slip Op. at 4.

of adequacy. *Roe v. Wade*, 410 U.S. 113, 159, 93 S.Ct. 705, 730. We are now at that point.

The *Casey* Court, being unable to affirm either *Roe's* correctness[3] or its morality,[4] concluded a mother's right to an abortion had to be preserved based upon *stare decisis* and special considerations because of a divisive national debate. J.M. in his individual capacity submits this brief to show how the aspects of *stare decisis* and the other concerns expressed by the *Casey* Court have no application to J.M.'s case.

When the unborn child is recognized as a separate and complete human being (capable of experiencing pain), *Roe* is in conflict with other sound principles of constitutional law, and has been the basis for developing law which is harmful and unjust. In addition, *Roe* should be overruled based upon the sound principles of *stare decisis* explained in Justice Brandeis' dissenting opinion in *Burnet*

[3] "We do not need to say whether each of us, had we been Members of the Court when the valuation of the State interest came before it as an original matter, would have concluded, as the *Roe* Court did, that its weight is insufficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions. The matter is not before us in the first instance, and coming as it does after nearly twenty years of litigation in *Roe's* wake we are satisfied that the immediate question is not the soundness of *Roe's* resolution of the issue, but the precedential force that must be accorded to its holding." *Casey*, Slip Op. at 29.

[4] "Some of us as individuals find abortion offensive to our most basic principles of morality, ..." (*Casey*, Slip Op. at 8)

v. Coronado Oil and Gas Co., 285, U.S. 393, 405-413 (1932) (Pet., 22-56). When *Roe* is thus observed *Roe* is seen as unworkable and any reliance on *Roe* is not of the type that would ever bar overruling an incorrect and harmful decision of the Court.

POINT I

ROE IS IN CONFLICT WITH OTHER PRINCIPLES OF CONSTITUTIONAL LAW. *ROE* HAS INFLUENCED AND SHALL CONTINUE TO INFLUENCE, DEVELOPMENTS AT ODDS WITH PERSONAL LIBERTIES AND SHALL PROMOTE HARMFUL CONDUCT WHICH *ROE* COMPELS STATES TO PROTECT.

Casey asserts "*Roe* portends no developments at odds with other precedent for the analysis of personal liberty", *Casey*, at 18, and "nor will courts building upon *Roe* be likely to hand down erroneous decisions as a consequence." *Casey*, at 16. Both statements are glaringly inaccurate when it is recognized that the unborn child is a human being. In addition, *Roe* has been, and shall continue to be responsible for harmful human conduct which *Roe* compels states to protect.

A. *ROE* IS IN CONFLICT WITH OTHER CONSTITUTIONAL PRINCIPLES AND SHALL RESULT IN LAW AT ODDS WITH PRECEDENT FOR THE ANALYSIS OF PERSONAL LIBERTY.

1.

When J.M. asserts his own constitutional right to association and companionship with his child, he asserts in essence that New Jersey failed to protect his constitutionally protected parental rights.

By issuing an order in favor of V.C., J.M.'s rights were terminated. By relying upon *Roe*, this result conflicts with precedent for the analysis of J.M.'s liberty rights. *Casey*, at 18.

To terminate an individual's parental rights, a state must establish by clear and convincing evidence that the continued relationship would be harmful to the child. *Santosky v. Kramer*, 455 U.S.745, 102 S.Ct. 1388 (1982). Two areas of inquiry determine whether a particular termination is constitutional: (a) whether the particular parent possess a constitutional right; and (b) whether the grounds for termination satisfy Due Process criteria. In both inquiries, the welfare of the child is the most critical determinant. The grounds for termination have always been related to what is best for the child: only if continuing the relationship would be harmful to the child, could a termination take place. *E.g., Santosky v. Kramer, supra*; *D.Y.F.S. v. A.W.*, 103 N.J. 591 (1986); *see also Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208 (1972); *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 1985 (1983). As grounds for termination of the rights of J.M., *Roe* conflicts with the termination analysis. Only J.M. sought to protect the best interests of the child, while the mother and the state sought to harm the child.

A second inquiry is whether a parent has a constitutionally pro-

tected relationship with the child in the first instance. Here too, the welfare of the child is a critical factor. Generally, both parents enjoy a fundamental constitutional right to companionship with their children, and children enjoy a corresponding right to association with both parents. *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388 (1982). A father of a child born out of wedlock enjoys a constitutionally protected relationship with his child. *Stanley v. Illinois*, 405 U.S. 645 (1972). A natural father has not always been recognized as a parent who enjoys such a constitutional right of companionship. *See Quilloin v. Walcott*, 434 U.S. 246 (1978); *Lehr v. Robertson*, 463 U.S. 248 (1983); *Michael H. v. Gerald D.*, 109 S.Ct. 2333 (1989). *Quilloin, supra,* explains under what circumstances the Court would recognize an unwed father's right as "fundamental" and when his rights are a "substantial interest":

> We have little doubt that the Due Process Clause would be offended 'if the state were to attempt to force the breakup of the natural family, over the objection of parents, and their children without some showing of unfitness and for the sole reason to do so was thought to be in the child's best interest'. *Smith v. Organization of Foster Families*, 431 U.S. 816, 862-863, 97 S.Ct. 2094, 2119 (1977). But this is not the case in which the unwed father at any time had, or sought, actual or legal custody of his child. Nor is this a case in which the proposed adoption would place the child with a new set of parents with whom the child had never before lived. Rather, the result of the adoption in this case is to give full recognition of the family already in existence, a result desired by all concerned, except

the appellant. *Quilloin*, 434 U.S. at 255.

This statement explains the difference in treatment of father's rights in *Lehr v. Robertson, supra*, (where the fundamental right of a mother to companionship of her child whom she carried was greater than that of the father who never established a relationship with the child), as well as *Michael H., supra,* (where a California statute was upheld against the challenge by a biological father of a child born to a married woman where she and her husband sought to preserve their relationship with the child). In *Quilloin*, *Lehr* and *Michael H.*, however, the dominant reason for the Court's refusal to recognize the father's rights was because there was an existing family which sought to protect the child's welfare. Therefore, the recognition of a father's rights relates to and depends upon whether a family exists or the mother competes to protect the child's welfare.

2.

Casey, in an effort to salvage *Roe*, holds that all fathers' rights may be destroyed to accommodate abortion. To reach that result the Court confuses two separate rights of the mother and ignores the real right of the father. A father's rights are for the companionship, care, custody and management of his children and are

entitled to constitutional "protection". *Stanley*, 405 U.S. at 650. *Casey* only examines the question of whether a father may require his "consent" for abortion. *Casey*, at 54-57. This misses the point. A father *never* has a right or interest in an abortion, so his permission could never be required. His *only* interest is in preserving the child's life and his relationship with the child, never in taking the child's life. *Casey* seems to recognize that the father possesses rights prior to the birth of the child.[5] But any analysis of *Roe* and *Casey* forming grounds to terminate a father's rights, or refusing to recognize them at all, which is not consistent with the welfare of the child is at odds with precedent defining parental rights. *Roe*, therefore, has created a right to kill a child and *Casey*, building upon *Roe*, recognizes this right as greater than a parent's right to protect the child. A part of the problem is *Casey's* confusing two separate rights of the mother: her own right to companionship with her child, and her *Griswold* privacy rights. Her right to

[5] When the issue first came up in the context of abortion, five Justices of the Supreme Court recognized the constitutional right of the father vested in him prior to birth. *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976). In Dissent, Justices White, Rehnquist and Chief Justice Burger recognized the right of the father to companionship of his children, and found that the balancing of the interests weighed in favor of the father's rights. 420 U.S. at 92, 93 (1976). The same right was recognized by Justices Stewart and Powell in a concurring opinion, finding that the balancing tipped in favor of the mother's rights. 428 U.S. at 89-91.

companionship exists even during pregnancy. C.f. *Lehr, supra*. The state could not demand she destroy the child once conceived or act to take the child away from her inconsistent with Due Process. But this right, like that of the father's, is only to preserve the life of the child and her relationship. This is the right that *Casey* compares with the father's and finds "equal" after birth. *Casey*, at 54. Once the child exists, it is impossible that her companionship interest is that which entitles her to terminate the father's rights and those of the child.

The fact that the mother is the parent who carries the child has always been considered relevant to her rights following birth when she is competing for custody with the natural father. This is our understanding of *Lehr*. This fact relates to human bonding and impacts upon the health of both the mother and child. That distinction is also recognized in New Jersey law which extends to the mother the right to choose to be the primary custodian when the natural parents do not live together and disagree on custody at the time of birth. *In The Matter Of Baby M*, 109 N.J. 396, 462, 463 (1988). Therefore, the "inescapable biological fact" that a mother carries the child physically relates to her rights when she seeks to protect the child. To suggest that that fact supports a right to kill

the child is contrary to constitutional principles dealing with termination rights. The fact that a mother wants to kill her own child would be a basis for terminating her constitutional rights and giving sole custody to the father. The privacy right to preserve the child cannot co-exist with the right to kill the child. They are repugnant.

The detrimental consequence of *Casey*, building upon *Roe*, is that it will now be understood that a father possesses no real constitutional rights prior to birth. Such an understanding is at odds with precedent for analysis of a parent's personal liberty rights, and those of the child. *See Santosky, supra. Roe* is also responsible for the cruel development of the law and human conduct in the context of surrogacy arrangements. No sperm or egg donor would have a constitutionally protected interest prior to birth. Consequently childbirth may be achieved through surrogates, genetically unrelated to a child, who, for any reason -no matter how cruel- could threaten to, and terminate the life of the child through abortion. (Consider such a threat in the context of *Anna J. v. Mark C.*, 386 Cal. Rptr. 369 (1991)). *Roe* has already changed the law from one which protects children to one which protects adults who play with the lives of children.

Casey adds a corollary: even if *Roe* was wrongly decided, it does not cause harm. This suggestion ignores the reality that the unborn child is a human being. *Roe* has devastating effects upon children who die during abortion, as well as those who survive it. Prior to *Roe* the New Jersey Supreme Court recognized that the unborn child was a separate person and that the child's life begins at conception. *Smith v. Brennan*, 31 N.J. 353, 362-364, 157 A.2d 497 (1960); *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson*, 422 N.J. 421, 201 A.2d 537 (1964).[6]

[6] *Smith v. Brennan*, and *Raleigh Fitkin* reflected New Jersey's strong policy for protecting life over its destruction. *Smith*, 31 N.J. at 364; *Raleigh Fitkin*, 422 N.J. at 423, 424. This policy, prior to *Roe*, resulted in protection of children from the harm and pain of abortions. *See* N.J.S.A. 2A:87-1. (To perform an abortion was a high misdemeanor which brought a penalty of fifteen years of incarceration. *See New Jersey v. Novak*, 22 N.J. 231, 121 A.2d 5 21 (1956); *New Jersey v. Sicilano*, 21 N.J. 249, 117 A.2d 490 (1956)). In refusing to recognize a tort action for the so called wrongful birth claims the New Jersey Supreme Court eloquently explained the public policy of New Jersey against abortion:

> "It is basic to the human condition to seek life and hold on to it however, heavily burdened. ... the right to life is inalienable in our society. ... we are not faced here with the necessity of balancing a mother's life against that of a child. The sanctity of a single human life is the decisive factor ... (that) it may have been easier for the mother and less expensive for the father to terminate the life of the child while he was an embryo, but these alleged determinants cannot stand against the preciousness of a single human life ..." *Gleitman v. Cosgrove*, 449 N.J. 22, 30, 31, 227 A.2d 689 (1967).

Roe required New Jersey to abandon the policy of protecting life. In 1979, even when *Roe* compelled New Jersey to recognize the wrongful birth cause of action, its Supreme court noted:

> One of the most deeply held beliefs of our society is that life ... is more precious than nonlife (citation omitted) ... concrete manifestations of this belief are not difficult to discover. Documents which set forth principles upon which our society are founded are replete with references to the *sanctity of*

The harm created by *Roe* is quite evident when the Court recognizes that the unborn child is a human being. Law that was carefully developed to protect innocent lives was swept away because the Court refused to acknowledge that these were persons in fact. For the children who are not aborted, *Roe* is often cruel. New Jersey now feels compelled to tell children that doctors who fail to inform their parents that the child may be born with a handicap, must pay large sums of money to their parents because their parents lost an opportunity to terminate their lives. *See Berman v. Allan, 80 N.J. 420 (1979)*; *Procanik v. Cillo*, 97 N.J. 339, 478 A.2d 755 (1984).

B. *ROE*, AND *CASEY*, BUILDING UPON *ROE*, ARE AT ODDS WITH THE PRECEDENT FOR ANALYSIS OF OTHER INDIVIDUAL RIGHTS: THE RIGHT TO EQUAL PROTECTION OF THE LAWS, THE RIGHT TO PROCREATION, AND THE RIGHT OF PARENTS TO DISCHARGE THEIR DUTIES TO THEIR CHILDREN.

Roe conflicts with other precedent for the analysis of individual liberties: the right to equal protection of the law, the right to pro-

> *life*. The federal constitution characterizes *life as one of the three fundamental rights* of which no one can be deprived without due process of law ... our own constitution proclaims that the 'enjoyment and defending of life' is a natural right. N.J. CONST. (1947), ART. I, SEC. I. The declaration of independence states that the primacy of man's 'unalienable' right to life is a 'self-evident truth'. Nowhere in these documents is there to be found an indication that the life of persons suffering from handicaps are to be less cherished than those non-handicapped human beings. *Berman v. Allan*, 80 N.J. 420, 429 (1979).

create, and the right of parents to discharge their duties to their children.

1. EQUAL PROTECTION.

Building on *Roe*, *Casey* found that although a father's constitutional rights and those of a mother are "equal" after birth, the mother's are greater before birth. *Casey*, at 54. This may be the consequence of *Roe*, but it is drastically in conflict with precedent dealing with the equal protection of the laws.[7] *See Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451 (1976); *Califano v. Goldfarb*, 430 U.S. 199, 97 S.Ct. 1021 (1977); *Califano v. Webster*, 430 U.S. 313, 97 S.Ct. 1192 (1977) (gender based classifications require at least an intermediate level of scrutiny; strict scrutiny if there is a denial of a fundamental right[8]).

Equal protection requires a balancing of the rights of a father who seeks to protect the child, and the mother's privacy interest in avoiding the stress of raising children. Where a mother's life is not at stake and she was not denied her *Griswold* rights there is no valid distinction between a father's rights concerning the life of his

[7] *See* Appendix of J.M., individually, Volume II at 130 to 143.

[8] *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969); *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964).

child and that of a mother. The interests of a woman identified by the *Roe* Court to support the mother's justification for an abortion apply equally to a father (the stress in rearing a child and stigma associated with unwed parents). *Roe*, 410 U.S. at 153. The fact that the mother carried the child does not bear upon a right to terminate the life of the child. Rather, it bears upon questions relating to what is in the interest of the mother and her child following birth. That is because the carrying of the child directly relates to bonding, which affects the health of both the child and the mother. It bears no relationship to the question of whether a father and child preserve their relationship. That an unborn child relies upon its mother for nourishment is not unique. Indeed, that fact creates obligations to the child, not exonerations. Even doctors, unrelated to a child, have legal obligations not to harm a child within a mother's womb. *Smith v. Brennan*, 31 N.J. 353 (1960).

Under the New Jersey parentage act N.J.S.A. 9:17-40 et seq. the obligations of J.M. are derived from the fact of conception alone. The birth is the natural consequence of the conception. His duties as a father under the law, which includes support, is derived from the fact of conception. He has no right to demand an abortion, nor should he. His embarrassment, hardship, or distress that

flows from an unplanned pregnancy, whether he is prepared to rear or support the child, is irrelevant to whether society should extend him the "right" to take the child's life.

However, where the right he seeks to enforce is one consistent with the child's best interest, the same statute that imposes obligations upon him based upon the single act of conception, extends to him the right to affirmatively choose to discharge his obligations through custody or visitation and support. Likewise, under the adoption statues, a judgment of adoption cannot be entered against the natural father over his objection, unless there is a specific finding of abandonment or neglect. N.J.S.A. 9:3-46. The right of a natural father who is not married to the mother is based solely upon his status as genetic father. *See In re Adoption of a Child by J.R.D.*, 246 N.J. Super. 619 (Ch.Div.1990).

The issue can be framed in different ways. *Casey* may choose to frame the issue as a father blocking the mother's right to take the life of her own child.[9] More to the point is that what V.C. propos-

[9] It is not the recognition of the rights of a father to protect his child which is a potential source of dishonoring in a marriage. It is the fact the Court created a right of abortion. A father could physically abuse a mother because the father *doesn't want* a child, and thereby force abortion against a mother's wishes. This seems a far greater harm.

es is that the father's enjoyment of the benefits of his relationship with his child, his fundamental constitutional rights, can be entrusted to another who could arbitrarily destroy a relationship with his child for any reason, whether it be benevolent or cruel.

If any fundamental constitutional right of the father is implicated, then the creation of a classification extending exclusive decision making power to the mother violates due process, because there would be no compelling interest of the State.[10] If his constitutional rights are not fundamental, the classification created is gender based, requiring intermediate scrutiny. *Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d. 397 (1976). As a result, the State classification must serve important governmental objectives and must be substantially related to the achievement of the objectives. The objective here is to protect the right of the mother to participate in making decisions about whether she should have children. *See Roe*, 410 U.S. at 153. That objective is already served. Once the mother conceives, she already has a child. Where one parent or the other is willing to raise the child or take responsibility for the child, the inconvenience of raising the child is not a consideration.

[10] See footnote 9, p. 14 above.

Gender certainly does not relate to the question. Considerations about the inconvenience of carrying the child, unique to the mother, are not implicated. They are relevant only prior to conception concerning the decision of whether a woman should become pregnant or not. Once she is pregnant and another human being is in existence, the considerations are quite different. The inconvenience of the mother in carrying the child is never a real consideration. That is reflected in the fact that even under *Roe* the State has a compelling interest in protecting the life of a child in the third trimester when pregnancy is most inconvenient to a mother and when she is subjected to the greatest pain (at childbirth). Therefore, gender is not a legitimate distinction that relates to the State's objectives concerning the question of whether a child should live or not,[11] and bears no legitimate relationship to the state's objective to allow couples to avoid pregnancy.

2. <u>THE RIGHT TO PROCREATE AND THE FATHER'S RIGHT TO DISCHARGE HIS OBLIGATION TO HIS CHILD.</u>

Casey states that *Roe* is not in conflict with *Skinner v. Oklahoma*,

[11] Parental rights derived under New Jersey law and the Federal Constitution always relate to the child's best interest. *Fantony v. Fantony*, 21 N.J. 525, 536 (1956). This is even true where conception is the result of artificial insemination under a contract that is unenforceable and void *ab initio*. *Baby M*, 109 N.J. 396 (1988). In actuality, when a father chooses to preserve the life of the child, he is exercising his parental right to do what is in the child's best interest.

316 U.S. 535 (1942), which recognized a fundamental constitutional right to procreate. That may be true of the right of V.C., but certainly not of J.M. A man's fundamental right to procreate reocgnized by *Skinner* would be meaningless, if once conception takes place all of the father's efforts to see that his child is born are frustrated by the mother, with assistance of the state. "The right to procreate very simply is the right to have natural children." *Baby M*, 109 N.J. at 448. The right to procreate cannot be equated with the right to conceive, otherwise the purpose of the right would be undermined:"...procreation (is) fundamental to the very existence and survival of the race." *Skinner,* 316 U.S. at 541.

As both law and nature impose upon J.M. obligations to his child based upon the fact of conception, there must be a concurrent right to discharge these obligations. It is recognized that a parent has a right to protect, care for, nurture, and educate his offspring. *See Pierce v. Society of Sisters*, 268 U.S. 510, 518 (1925). In nature, what higher law is there than that of a parent to protect the life of his own child?

C. <u>*ROE* IS AT ODDS WITH PRECEDENT FOR THE DEVELOPMENT OF PERSONAL LIBERTIES IF A STATE CAN BE RECOGNIZED AS HAVING A RIGHT WHICH IS NOT PERSONALIZED IN THE INDIVIDUAL THE STATE SEEKS TO PROTECT.</u>

The greatest threat to all individual liberties may well be the holding of *Roe* that the State has the power to protect a child (following viability) yet the child has no right from which the State's power is derived or with which it coexists. The State, therefore, has the power to protect a man's child, but he himself does not. Such a notion, if permitted to stand, is inconsistent with American concepts of the essence of government itself, the Declaration of Independence declaring that governments are instituted to secure the rights of individuals (individuals do not exist for government). It is also inconsistent with the law which reflects that the power of the State to protect the child rests in its *parens patriae* jurisdiction. *See Santosky*, 455 U.S. at 766, 102 S.Ct. at 1401; *C.f. Snapp v. Puerto Rico*, 458 U.S. 592, 600, 102 S.Ct. 3260, 3265 (1982); *Cox Broadcasting Corp. v. Cohen*, 420 U.S. 469, 486, 95 S.Ct. 1029, 1042 (1975); *Raleigh Fitkin supra*; *see also* Petition of J.M., Individually at 61, 62.

POINT II

ONCE THE COURT RECOGNIZES THAT THE UNBORN CHILD IS A PERSON, RELIANCE IS NOT A DOCTRINE WHICH WOULD OPERATE AS A BAR TO OVERRULING *ROE*, AND *ROE* IS THUS SEEN AS BEING UNWORKABLE.

Casey found that reliance is a bar to overruling *Roe*. *Casey*, at 14. J.M. suggests that for reliance to be a true bar to overruling

any case it must be of the type referred to in *Payne v. Tennessee*, 501 U.S. ___ (1991): the particular conduct engaged in by those who rely upon a specific holding poses no harm to others. *See Casey*, at 12-13. But if the conduct which is performed as a result of the "reliance" is harmful to others, then the fact that the decision encourages the conduct is actually a reason to overrule the decision, not perpetuate the harm. *Casey* ignores the nature of the conduct. Once it is recognized that the life of a child is being taken, the fact that one relied upon an erroneous Supreme Court decision is no basis to perpetuate the cruel conduct of killing children (especially when they experience pain). The reliance argument also ignores the fact that conception may be intentional.

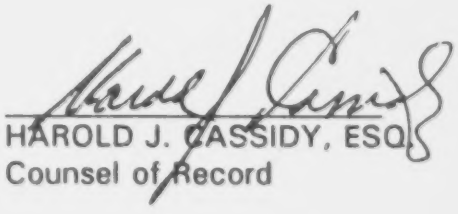
Another question is thus posed: does one have a right to abortion because one has a right to enter into irresponsible and immature sexual conduct? Or does one have a right to enter into irresponsible conduct because one has this right to an abortion? If it is the latter, it is almost as though one has to be permitted the irresponsible conduct, even if it is unnecessary to preserve the true privacy interest. This is because the privacy interest has been viewed as an all encompassing "right to an abortion" without any relation to the real underlying interest. If the former, then the right is one of

enjoying irresponsible conduct without concurrent obligations.

When it is recognized that the unborn child is a person in fact, the unworkable nature of *Roe* is apparent. No rule of law that permits one person to take the life of another with impunity will go ignored by people of conscious and the rule of law will engender no respect. Law unworthy of respect is inherently unworkable. That the *Roe* Court justified its decision because mankind could not determine when the life of a person began, is at odds with current science and medicine.

CONCLUSION

"Man's" current knowledge not only justifies, but requires, that the Court now overrule that portion of *Roe* which found that the unborn child was not a person and did not enjoy constitutional rights.



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